IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1722 OF 1990

Bhikaji Dattatraya Shivudkar,
Age about 41, Occ: Ex-Service,
c/o Shri N.S. Ghatage,
1227/D-Ward, Uttareshwar Peth,
Kolhapur, Dist: Kolhapur. .... Petitioner

- Versus -

1. Bhogawati Shikshan Prasarak Mandal, Shahunagar.

2. The Principal,
Bhogawati Mahavidyalaya,
Shahunagar.

3. The Presiding Officer,
University College Tribunal,
Shivaji University,
Camp Kolhapur. .... Respondents

Shri S.M. Kamble for the Petitioner.

Mrs. Anita Agarwal for the Respondent Nos.1 and 2.

CORAM: R.M.S. KHANDEPARKAR &
Mrs. ROSHAN DALVI, JJ.

DATED: MARCH 16, 2006

ORAL JUDGMENT (Per R.M.S. Khandeparkar, J.):

1. Heard. The petitioner challenges the judgment and order dated 8-2-1990, passed by the College Tribunal, Pune in Appeal No.56/1988(S). By the impugned order, while partly allowing the appeal filed by the petitioner, the Tribunal had set aside the punishment of termination of services of the petitioner but in

exercise of powers under Section 42(D)(2)(e) of the Shivaji University Act, 1974, hereinafter called as "the said Act", ordered payment of compensation of his emoluments for six months instead of direction for reinstatement. It is against this part of the impugned order refusing reinstatement, that is being challenged in this petition.

2. Upon hearing the learned Advocates for the parties and on perusal of the records, it is seen that the Tribunal, while setting aside the order of termination of services of the petitioner passed by the management had held that, out of the seven charges which are levelled against the petitioner, only one charge regarding the arrogant behaviour was established and, therefore, the punishment of termination of services, which was inflicted upon the petitioner, was too harsh penalty; however, taking into consideration the fact that the management has lost confidence in the petitioner, the Tribunal exercised its powers under Section 42(D)(2)(e) of the said Act while awarding the compensation in lieu of reinstatement.

3. Perusal of the impugned judgment and order discloses that the charge relating to arrogant behaviour on the part of the petitioner was clearly established by the oral evidence in that regard with reference to various

incidents during his service tenure. The Tribunal has referred to some of such instances and they include the instances of use of insulting and abusive language to towards the professors including the Principal of the institution. The Tribunal has also referred to the testimonies of various witnesses who have deposed regarding the conduct of the petitioner which reveal that the petitioner had been in the habit of using indecent language as well as of arrogant behaviour towards the Principal and members of the teaching staff. It is to be noted that the petitioner was occupying the post of head-clerk in the said institution and yet he was acting as if he was the whole and sole of the management of the institution. The Tribunal has also taken note of the various facts regarding his arrogant behaviour. One of the incidents referred to by the Tribunal relates to the fact of driving the principal out of the Principal's chamber merely because the petitioner wanted to have some discussion in the Principal's chamber with the chairman of the institution. The impugned judgment also refers to the fact that inspite of specific direction by the management, the petitioner did not submit the original documents in relation to the employment of the petitioner with the institution and when repeatedly asked about the same, he expressed inability to produce the same, without any proper explanation for failure to

produce the original documents. It is to be noted that being a head-clerk, he was in-charge of the documents of the institution in relation to the employees of the institution. The observations in that regard by the Tribunal in the impugned judgment are clearly borne out from the records and do not disclose any sort of perversity or arbitrariness on the part of the Tribunal in arriving at those findings.

4. The impugned judgment also refers to incidents corroborated by the testimony of one of the witnesses by name Mazgaonkar to the effect that on one occasion the petitioner was found shouting at some other person using impolite and indecent language and inspite of being warned against the use of such language particularly on account of presence of the guests in the institution, he persisted and continued to misbehave.

5. Taking into consideration the fact that the arrogant behaviour and use of impolite and indecent language being established by the necessary oral evidence in that regard, the finding arrived at by the Tribunal in respect of establishment of such charge cannot be found fault with. The said finding is clearly borne out from the records.

6. It is well-settled law that the quantum of

punishment is essentially for the management to decide. Undoubtedly, if the punishment is totally disproportionate to the act of proved misconduct, certainly the Tribunal can interfere therein. However, it is not necessary for us to go into the issue as to whether the Tribunal was justified in interfering with the punishment which was imposed upon the petitioner in view of the fact that the order of the Tribunal in that regard has not been challenged by the management. However, fact remains that the Tribunal has also held that the materials on record clearly establish that the management had lost confidence in the petitioner. Added to this, the charge regarding the arrogant behaviour and use of impolite and indecent language having been established, no fault can be found with the order of the Tribunal refusing to order reinstatement of the petitioner in the service. In our considered opinion, the Tribunal having found the punishment of termination of the services to be disproportionate to the proved misconduct, but the management having lost confidence in the petitioner, the Tribunal was justified in exercising its powers under Section 42(D)(2)(e) of the said Act and thereby to order the payment of compensation of the petitioner’s emolument for six months instead of ordering his reinstatement in the services. The order passed in that regard cannot be found fault with, nor it discloses arbitrary exercise of jurisdiction in any

manner.

7. In the result, therefore, there is no case made out for interference in the impugned order. The petition, therefore, fails and is hereby dismissed. The rule is discharged with no order as to costs.

(Mrs. Roshan Dalvi, J.) (R.M.S.Khandeparkar, J.)

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